

U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

MM

[REDACTED]

FILE:

[REDACTED]

Office: Vermont Service Center

Date: **APR 28 2004**

IN RE:

Applicant

[REDACTED]

PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

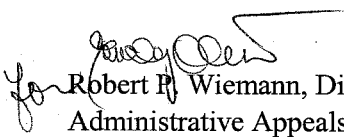
ON BEHALF OF PETITIONER:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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prevent clearly unwarranted
invasion of personal privacy*


Robert R. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant failed to establish he had continuously resided in the United States since February 13, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts that he has resided in the United States since June 6, 2000.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period, announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation, if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The term *continuously physically present*, as used in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to

maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as used in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On October 25, 2002, the applicant was provided the opportunity to submit evidence establishing his residence since February 13, 2001. The applicant, in response, only provided a copy of a letter from [REDACTED]. Mr. [REDACTED] stated that he has known the applicant since February 2000 and that the applicant has rented a room from him since May 2000. However, neither Mr. [REDACTED] nor the applicant provided any rent receipts or other evidence to support this claim. The applicant claims to have lived in the United States since June 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support this claim; however, no such evidence has been provided. The applicant did not present sufficient evidence of his residence in the United States since February 13, 2001. Therefore, the director denied the application.

On appeal, the applicant claims that he entered the United States on June 6, 2000 as a B1/B2 nonimmigrant visitor and he overstayed his visa when the earthquake struck El Salvador. The applicant also submitted a copy of his visa. According to the applicant, he worked for cash and paid cash to his landlord. As discussed above, it is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

It should be noted that on his application, and in the letter from Mr. [REDACTED] it is claimed that the applicant entered the United States on June 6, 2000. However, Mr. [REDACTED] stated that he has rented a room in his home to the applicant since May 2000. This contradicts the applicant's record of entry and his claim on appeal, thereby further reducing the reliability of Mr. [REDACTED] claim.

The applicant has not submitted any evidence to establish that he has met the criteria for residence and physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

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ORDER: The appeal is dismissed.